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IN THE
COURT OF APPEALS OF INDIANA

HAL-MARK RENTAL CENTER, INC.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 76A03-0606-CV-245
	)	
SENTRY SELECT INSURANCE CO.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0505-CC-0258

March 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Hal-Mark Rental Center, Inc. (Hal-Mark) appeals the trial court's grant of summary judgment in favor of Sentry Select Insurance Co. (Sentry) on all issues contained in Hal-Mark's complaint and in Sentry's counterclaim for declaratory judgment. Specifically, Hal-Mark acknowledges that "[t]here may not be a genuine issue of fact per se" but argues that "the trial court erred in granting summary judgment when it failed to address and rule on a material issue of law" regarding whether the insurance policy provided illusory coverage. Appellant's Br. p. 4-5. Finding no error, we affirm the trial court's grant of summary judgment in favor of Sentry.

FACTS

Hal-Mark is in the business of renting commercial equipment, including Bobcat excavators. Sentry issued Hal-Mark an insurance policy with "Special Transit Coverage" that was effective from March 25, 2004 to March 25, 2005. Appellee's App. p. 62. The policy provided, in relevant part:

> A. Coverage
>
> We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.
>
> * * * * *
>
> 3. Covered Causes of Loss
>
> Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE to Covered Property except those causes of loss listed in the Exclusions.
>
> 4. Additional Coverages
>
> * * * * *

b. "False Pretense"

We will pay for loss resulting from "false pretense".

This Additional Coverage does not apply to loss:

* * * * *

(7) If you fail to obtain, verify and document, prior to the transaction, the other party's business address, telephone number and drivers license number.

* * * * *

B. Exclusions

* * * * *

2. We will not pay for loss or damage caused by or resulting from any of the following:

g. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, devise or false pretense. But this exclusion does not apply to coverage under the "False Pretense" Additional Coverage.

* * * * *

F. Definitions

1. "False Pretense" means loss resulting from any of the following:

a. Someone causing you to voluntarily part with possession of or evidence of title to Covered Property when induced, at the time of sale, by:

(1) Receipt of a forged or counterfeit instrument in payment;

(2) Receipt of a check or other instrument written on an account closed before the instrument is presented for payment;

> (3) A false or forged name, social security number, or signature on a credit application or a rental or lease agreement;
>
> (4) Any other criminal scheme, criminal trick or criminal device.
>
> You must have had legal ownership of covered property and the covered property must have been in your possession prior to the loss.

Id. at 62, 64-65, 69, 71-72, 77 (emphases added).

On June 9, 2004, Ed Mountz, an employee of Hal-Mark, received a telephone call from an individual who stated that he wanted to rent a Bobcat excavator (Bobcat). The individual on the phone identified himself as Robert Haney. Mountz and Haney made arrangements to have the Bobcat delivered to a construction site on June 11, 2004, so that Haney could use it on June 12, 2004. Haney was to use the Bobcat and then leave payment for the rental under the lid of a liquid propane tank at the construction site, where Hal-Mark would pick up the Bobcat and payment that same evening. During the phone call, Haney told Mountz his name, address—which was in Kentucky—and telephone number, and Mountz wrote it down on a standard Hal-Mark rental agreement. Mountz "then read back the information to Mr. Haney, who verified its accuracy." Appellant's App. p. 56. Mountz did not obtain Haney's drivers license number or a copy of Haney's drivers license. That same day, Haney called Hal-Mark back twice to confirm that the Bobcat was going to be delivered to the construction site.

During the evening of June 11, 2004, another customer of Hal-Mark, who had been using the Bobcat, delivered it to the construction site. On June 12, 2004, when Hal-Mark went to the construction site, there was no Bobcat and no payment left under the

liquid propane tank. Thereafter, Hal-Mark filed a claim with Sentry and alleged that someone had stolen the Bobcat. On July 27, 2004, Sentry sent Hal-Mark a letter of denial, wherein Sentry acknowledged that Hal-Mark's "theft was a definite form of False Pretense as provided for under the policy" but denied Hal-Mark's claim based upon the fact that "no one at the dealership obtained, verified or documented any type of identification from the alleged customer." Id. at 14.

In May 2005, Hal-Mark filed a complaint against Sentry, claiming that Sentry had breached its contract with Hal-Mark by failing to provide insurance coverage and indemnification to Hal-Mark for the theft of its personal property and that Sentry had breached its duty to deal with Hal-Mark in good faith. Hal-Mark also sought punitive damages. In June 2005, Sentry filed its answer and affirmative defenses, claiming that Hal-Mark's claim was barred because it had "failed to satisfy a condition of the policy relating to the coverage under which the claim was made" when it "failed to obtain, verify and document, prior to the transaction, the other party's business address, telephone number and drivers license." Appellee's App. p. 2-3. Sentry also filed a counterclaim for declaratory judgment, seeking an order "[d]eclaring that there is no coverage for the claimed loss as Hal-Mark did not comply with the terms, conditions, and requirements of [t]he [p]olicy." Id. at 6.

In March 2006, Sentry filed a motion for summary judgment in which it argued that summary judgment was appropriate on Hal-Mark's complaint and its declaratory judgment counterclaim based on Hal-Mark's failure to comply with the requirements of the insurance policy. Hal-Mark filed a response and argued that it documented the

required customer information when its employee wrote down the customer's identifying information and that it verified the information when Hal-Mark's employee read the customer's information back to him. Hal-Mark also argued that the false pretense provision of the insurance policy created illusory coverage.

On May 10, 2006, the trial court held a summary judgment hearing. Thereafter, the trial court issued an order granting Sentry's motion for summary judgment on Hal-Mark's complaint and on Sentry's counterclaim for declaratory judgment.[1] Specifically, the trial court concluded that Hal-Mark was not entitled to coverage under the False Pretense portion of the insurance policy because it failed to obtain, verify, and document, prior to the transaction, the purported renter's business address, telephone number, and driver's license number.[2] Hal-Mark now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Am. Home Assurance Co. v. Allen, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004). A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Tack's Steel Corp. v. ARC Constr. Co., Inc., 821 N.E.2d 883, 888 (Ind. Ct. App. 2005). A factual issue is "genuine" if it is

[1] The order that the trial court issued was the proposed order that Sentry tendered when it filed its summary judgment motion.

[2] The trial court also determined that Sentry's denial of the claim was in good faith; however, Hal-Mark makes no argument on appeal regarding the grant of summary judgment on its bad faith claim.

not capable of being conclusively foreclosed by reference to undisputed facts. Am. Mgmt., Inc. v. MIF Realty, L.P., 666 N.E.2d 424, 428 (Ind. Ct. App. 1996). Although there may be genuine disputes over certain facts, a fact is "material" when its existence facilitates the resolution of an issue in the case. Id.

When we review a trial court's entry of summary judgment, we are bound by the same standard that binds the trial court. Id. We may not look beyond the evidence that the parties specifically designated for the motion for summary judgment in the trial court. Best Homes, Inc. v. Rainwater, 714 N.E.2d 702, 705 (Ind. Ct. App. 1999). We must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. Shambaugh & Son, Inc. v. Carlisle, 763 N.E.2d 459, 461 (Ind. 2002). On appeal, the trial court's order granting or denying a motion for summary judgment is cloaked with a presumption of validity. Sizemore v. Erie Ins. Exch., 789 N.E.2d 1037, 1038 (Ind. Ct. App. 2003). A party appealing from an order granting summary judgment has the burden of persuading us that the decision was erroneous. Id. at 1038-39. A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000).

In addition, the interpretation of an insurance policy generally presents a question of law and is thus appropriate for summary judgment. Morris v. Economy Fire and Cas. Co., 848 N.E.2d 663, 665-66 (Ind. 2006), reh'g denied. A contract for insurance is subject to the same rules of interpretation as are other contracts. Id. at 666. If the language in the insurance policy is clear and unambiguous, then it should be given its

plain and ordinary meaning, but if the language is ambiguous, the insurance contract should be strictly construed against the insurance company. Id.

II. Hal-Mark's Argument on Appeal

As noted above, Hal-Mark acknowledges that "[t]here may not be a genuine issue of fact per se" but argues that the trial court's order granting summary judgment was erroneous because the trial court failed to address the issue of whether the false pretense provision of the insurance policy was illusory. Appellant's Br. p. 4.

The trial court granted summary judgment to Sentry after interpreting the insurance policy and finding that Sentry properly denied coverage to Hal-Mark based on Hal-Mark's failure to comply with the requirements for the False Pretense coverage contained in the insurance policy. Specifically, the trial court concluded that Sentry failed to obtain, verify, and document, prior to the transaction, the purported renter's business address, telephone number, and driver's license number.

Hal-Mark does not specifically challenge the trial court's determination that it failed to comply with the requirements for False Pretense coverage under the insurance policy and, indeed, it concedes that it did not obtain customer Haney's drivers license number prior to the transaction and did not obtain any physical documentation of Haney's identifying information. Instead, Hal-Mark argues that "even had a driver's license number been provided" and "even had Hal-Mark obtained physical documentation of the identifying information," Sentry still would have denied coverage under the False Pretense provision of the policy, thereby creating illusory coverage. Id. at 8-9. Thus, Hal-Mark contends that the trial court's "failure to address and rule on a

material issue of law[—the illusory issue]" rendered the grant of summary judgment to Sentry erroneous. Id. at 4.

First, there is no requirement that the trial court make specific findings of fact and conclusions of law when ruling on a summary judgment motion. See Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000). Here, Sentry filed its motion for summary judgment, arguing that summary judgment was appropriate on Hal-Mark's complaint and its declaratory judgment counterclaim based on Hal-Mark's failure to comply with the requirements of the insurance policy. Hal-Mark raised the illusory coverage issue as a means to counter Sentry's summary judgment argument. The trial court's conclusion that Hal-Mark had failed to comply with the requirements of the insurance policy necessarily implies that it rejected Hal-Mark's illusory coverage argument.

Moreover, Hal-Mark has provided no designated evidence to show that the policy was illusory. "Our [S]upreme [C]ourt has defined illusory coverage as that for which the insured paid a premium but from which he would not be paid benefits under any reasonably expected circumstances." Jones v. State Farm Mut. Auto. Ins. Co., 635 N.E.2d 200, 202 (Ind. Ct. App. 1994).

Here, Hal-Mark's policy clearly and unambiguously provided that Hal-Mark would not be able to obtain coverage under the False Pretense provision if it "fail[ed] to obtain, verify and document, prior to the transaction, the other party's business address, telephone number and drivers license number." Appellee's App. p. 65. Thus, the policy provided coverage for situations involving false pretense except for when the insured

failed to fulfill these requirements. We have held that "one express limitation in coverage does not render [an insurance] policy illusory as a matter of law." Jones, 635 N.E.2d at 202. Accordingly, we conclude that the trial court's entry of summary judgment in favor of Sentry was not erroneous.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.